Historical Research Report Series
Report No. 1

The Six Nations Indian Land Claim to the Bed of the Grand River

Donald J. Bourgeois
Office of Indian Resource Policy

Ontario
Ministry of Natural Resources
Hon. Vincent G. Kerrio
Minister
Mary Mogford
Deputy Minister

©1986, Queen's Printer for Ontario
Printed in Ontario, Canada

Current publications of the Ontario Ministry of Natural Resources, and price lists, are obtainable through the Ministry of Natural Resources Public Information Centre, Room 1640, Whitney Block, 99 Wellesley Street West, Toronto, Ontario M7A 1W3 (personal shopping and mail orders).

And:

Personal shopping: Ontario Government Bookstore, Main Floor, 880 Bay Street, Toronto.

Mail Orders: MGS Publications Services Section, 5th Floor, 880 Bay Street, Toronto, Ontario M7A 1N8. Telephone 965-6015. Toll free long distance 1-800-268-7540, in Area Code 807 dial 0-Zenith 67200.

Cheques or money orders should be made payable to the Treasurer of Ontario, and payment must accompany order.

Table of Contents

		Page
List of Illustrations		iv
General Statement of Purpose		v
Acknowledgements		vi
Map: The Six Nations Indian Reserve Adjacent to the Grand River		vii
I	**Introduction**	1
II	**Historical Background**	2
	(a) The Six Nations Interest in Land in the United States	2
	(b) The Six Nations and the American Revolution, 1775–1783	2
	(c) The Haldimand Proclamation of October 25, 1784	4
	(d) **An Act to introduce the English Law as the Rule of Decision,** 1792 and the common law principle of **ad medium filum aquae**	10
	(e) The Simcoe Patent of January 14, 1793	10
	(f) The Surrender of 1841	12
	(g) **The Indian Protection Act, 1850**	14
	(h) Legislative and Administrative Jurisdiction	15
III	**Summary**	16
IV	**Notes**	18
V	**Bibliography of Primary Sources**	23
VI	**Glossary**	25

List of Illustrations

Plate 1 "Substance of Captain Brants wishes respecting forming a Settlement of the Mohock and others of the Six Nation Indians upon the Grand River". [Provincial Archives of Ontario, RG1, A-I-1, Vol. 2, p.147.]

Plate 2 "Indenture made at Niagara the twenty second day of May in the year of our Lord one thousand seven hundred and Eighty four between... the Mississaga Indian Nation... and our Sovereign Lord, George the Third...". [Provincial Archives of Ontario, RG1, A-I-1, Vol. 2, pp. 145–147].

Plate 3 The Mohawk Village, Grand River, 1793. [Provincial Archives of Ontario, Simcoe Sketch 75].

General Statement of Purpose Historical Research Report Series

Office of Indian Resource Policy Ministry of Natural Resources

The Office of Indian Resource Policy is part of the Ontario Ministry of Natural Resources. As part of its mandate, the Office of Indian Resource Policy prepares several historical Research Reports each year to enable the Ontario Government to respond fully to Indian Land Claims and other related natural resource issues submitted by Indian Bands or other Indian organizations in Ontario. Each of these Research Reports outlines the basis of an Indian Land Claim or related natural resource issue and is intended to present all of the known historical facts relevant to that claim or issue based on the written record.

An Editorial Advisory Board has been established to advise the Director, Office of Indian Resource Policy, on the scholarly value of the proposed publications and to make suggestions with respect to those proposed publications. The Editorial Advisory Board includes Dr. E.S. Rogers, Curator of Ethnology, Royal Ontario Museum; Dr. J.D. Leighton, Associate Professor of History, Huron College, University of Western Ontario; Dr. M.F. Walmsley, Science Advisor and Co-ordinator, Ministry of Industry, Trade and Technology, and Dr. D.C.F. Fayle, Research Scientist, Ministry of Natural Resources.

In keeping with the Government of Ontario's expressed policy of making the results of the Government's research efforts available to the public, the Office of Indian Resource Policy has established an Historical Research Report Series.

The objectives of the Historical Research Report Series are to:

(i) inform individuals and institutions of an Indian Land Claim in which they may have an interest, to outline the basis put forward in the Claim, and the historical facts surrounding it;

(ii) make available to individuals and institutions historical information in a form that would otherwise be unavailable or difficult to obtain;

(iii) to help promote further research into Indian Land Claims and other related natural resource issues brought forward by or on behalf of Indian people;

(iv) to help promote a dialogue on Indian Land Claims and other related natural resource issues brought forward by or on behalf of Indian people.

The reports published in the Historical Research Report Series objectively present what are seen by the authors as relevant historical facts based upon the written record of the event or events. They are not intended to present the position of the Ontario Ministry of Natural Resources or the Government of Ontario with respect to an Indian Land Claim or other related natural resource issue. The Research Reports in the Historical Research Report Series deliberately do not come to any conclusion as to the validity or legitimacy of an Indian Land Claim or other related natural resource issue.

A copy of this report has been forwarded to the Six Nations Indian Band.

E.G. Wilson, Director
Office of Indian Resource Policy
Ontario Ministry of Natural Resources
May 21, 1986

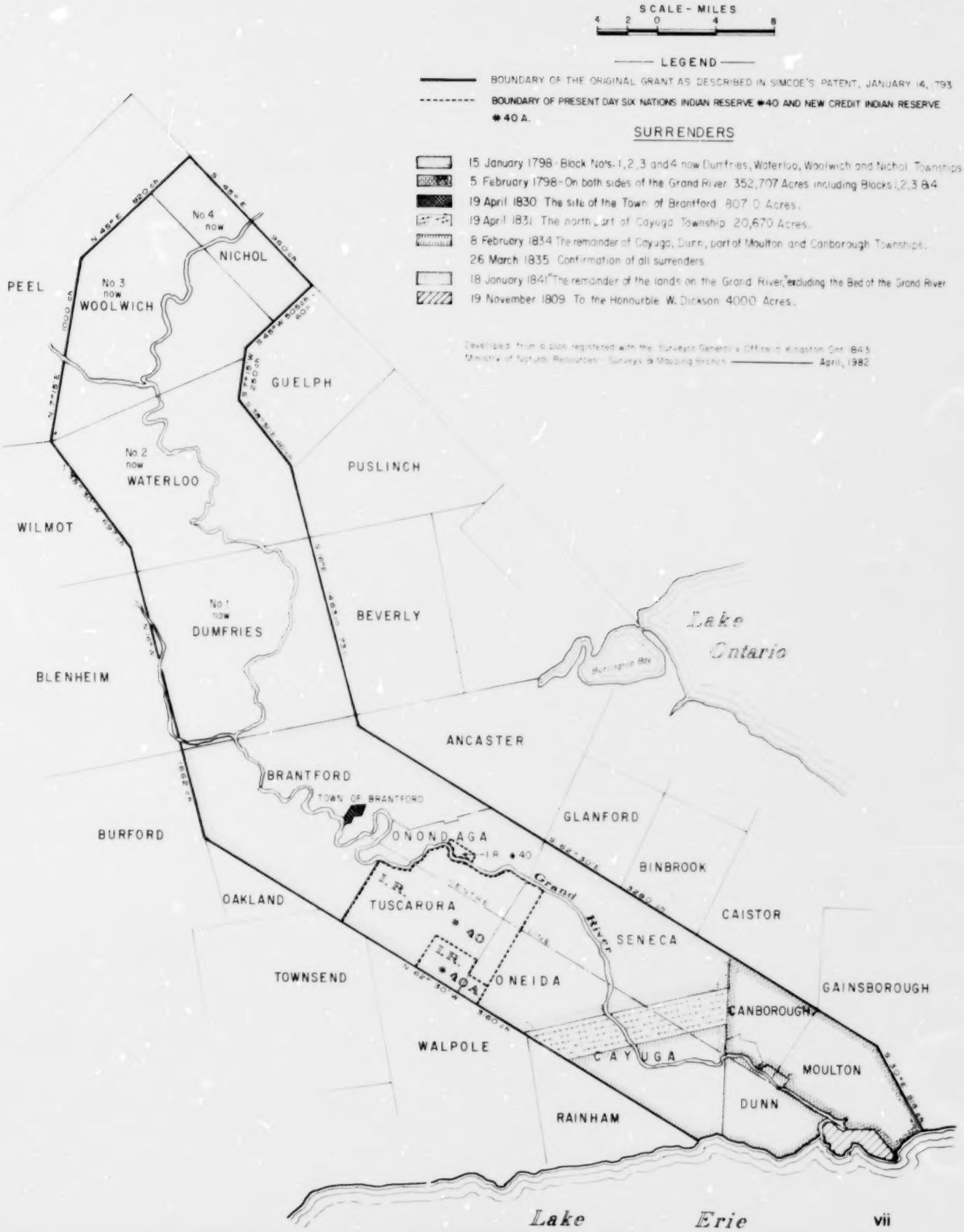
Acknowledgements

A major objective of the Historical Research Report Series and for this publication, **The Six Nations Indian Land Claim to the Bed of the Grand River,** is to provide to students and other interested individuals historical information in a form that would otherwise be unavailable or difficult to obtain. No author could attempt to meet this objective without the assistance of many individuals.

The work of archivists, both present and past, at the Public Archives of Canada, the Ontario Archives and elsewhere has been essential to the research, by locating and providing the documentary record used in this Historical Research Report. The critical review of several drafts of the manuscript by and the suggestions of Dr. Edward S. Rogers, Dr. J. Douglas Leighton, Dr. Martin F. Walmsley and Dr. David C.F. Fayle, of the Editorial Advisory Board, have contributed much of value to the final product. My colleagues at the Ontario Ministry of Natural Resources, especially those in the Office of Indian Resource Policy, Communications Services Branch, and Drafting Services Section have greatly helped in producing this Historical Research Report. Any errors or omissions in the research or in the Historical Research Report are the sole responsibility of the author.

Donald J. Bourgeois
May, 1986

THE SIX NATIONS INDIAN RESERVE ADJACENT TO THE GRAND RIVER 1784 TO 1850


SCALE - MILES
4 2 0 4 8
LEGEND
BOUNDARY OF THE ORIGINAL GRANT AS DESCRIBED IN SIMCOE'S PATENT, JANUARY 14, 1793
BOUNDARY OF PRESENT DAY SIX NATIONS INDIAN RESERVE #40 AND NEW CREDIT INDIAN RESERVE #40A.
SURRENDERS
15 January 1798 - Block Nos. 1, 2, 3 and 4 now Dumfries, Waterloo, Woolwich and Nichol Townships.
5 February 1798 - On both sides of the Grand River 352,707 Acres including Blocks 1, 2, 3 & 4
19 April 1830 The site of the Town of Brantford 807.0 Acres.
19 April 1831 The north part of Cayuga Township 20,670 Acres.
8 February 1834 The remainder of Cayuga, Dunn, part of Moulton and Canborough Townships.
26 March 1835 Confirmation of all surrenders.
18 January 1841 "The remainder of the lands on the Grand River," excluding the Bed of the Grand River.
19 November 1809 To the Honourable W. Dickson 4000 Acres.
Developed from a plan registered with the Surveyor General's Office in Kingston Ont. 1845
Ministry of Natural Resources - Surveys & Mapping Branch — April, 1982
No. 4 now NICHOL
No. 3 now WOOLWICH
No. 2 now WATERLOO
No. 1 now DUMFRIES
PEEL
GUELPH
PUSLINCH
WILMOT
BEVERLY
BLENHEIM
ANCASTER
BRANTFORD
TOWN OF BRANTFORD
BURFORD
GLANFORD
ONONDAGA
I.R. #40
BINBROOK
OAKLAND
I.R. TUSCARORA #40
Grand River
CAISTOR
SENECA
I.R. #40A
ONEIDA
TOWNSEND
GAINSBOROUGH
CANBOROUGH
WALPOLE
CAYUGA
MOULTON
DUNN
RAINHAM
Lake Ontario
Hamilton Bay
Lake Erie

I Introduction

The Six Nations Indian Band at Indian Reserve #40 has claimed that the bed of the Grand River is within the boundaries of the tract of land granted to the Six Nations Indian people in 1784 by Sir Frederick Haldimand for their use and occupation. The Band submitted its claim to the Ontario Ministry of Natural Resources on January 26, 1981. That submission outlined the legal and historical bases for the Land Claim.

The purpose of this Research Report is to present all the known historical facts which are relevant to the above Claim. This Research Report does not attempt to draw any conclusions concerning the facts presented and it does not constitute the Government of Ontario's position on the Six Nations Indian Land Claim to the bed of the Grand River.

II Historical Background

(a) The Six Nations Interest in Land in the United States

The Six Nations are a confederacy of Indian peoples established in the late sixteenth century. The confederacy originally included the Mohawk, Oneida, Onondaga, Cayuga and Seneca (the Five Nations). The Tuscarora joined the confederacy in the early eighteenth century to form the Six Nations.[1]

The Six Nations moved to the Grand River Valley and an area adjacent to the Bay of Quinte from their traditional hunting grounds in the United States in 1784. Their traditional hunting grounds were south of Lakes Ontario and Erie comprising an approximate area from the Hudson River in the east to Lake Erie in the northwest and including the northern part of Pennsylvania in the south.[2] This area was within the larger territory identified in the Royal Proclamation of 1763 as part of the Indian territory and subject to the provision of this Proclamation to protect Indian lands, e.g., Indian lands could only be alienated to the British Crown.

Pursuant to the Royal Proclamation of 1763, Sir William Johnson (c. 1715–1774), Superintendent of Indian Affairs for the Northern Superintendency, negotiated the Treaty of Fort Stanwix in 1768, with the Six Nations. The Six Nations considered the Treaty to be another in a "chain" of peace treaties with the British, to confirm that they were allies with the British Government.[3] However, the Treaty of Fort Stanwix was more than just a peace treaty because it established a line running roughly along the Ohio River and the "Alleghany Mountains", identified as the "Old Treaty Line." This line was to mark the division of Indian lands which remained under the protection of the Royal Proclamation of 1763 from the American colonies to the south and east of the line. The British viewed the Treaty as a cession of land to the Crown by the Six Nations.[4] The British also considered the Treaty to have established an area for the exclusive use and occupation of the Indian people in the remainder of the Six Nations hunting grounds in the American territory consistent with the Royal Proclamation of 1763. Sir William Johnson understood his instructions from the Government in England to be:

> *that Measures Should be taken with the consent & Concurrence of the [Six Nations] Indians to Ascertain a fixed Boundary for the Lands, to be reserved to them, and where no Settlements whatever Should be allowed, on this I sounded the Indians, who agreed to it, & they were promised a verry [sic] handsome Return for what they should give up to the Provinces.*[5]

To this end, he negotiated with the Six Nations "a Deed of Cession to his Majesty" in the Spring of 1768.[6]

(b) The Six Nations and the American Revolution, 1775–1783

The Six Nations, with the major exceptions being the Oneida and some of the Seneca and Mohawk, fought with the British troops against the American forces during the American Revolution, 1775–1783. The Governor of Quebec, Sir Guy Carleton, at the outbreak of the war with the American colonies, promised to restore to the Six Nations their land delineated by the Treaty of Fort Stanwix, 1768. On April 7, 1779, Sir Frederick Haldimand, Commander in Chief of Quebec and His Majesty's Forces, reiterated the commitment made by Sir Guy Carleton:

> *Some of the Mohawk... whose settlements... had been, upon account of their steady attachment to the King's Service and the Interests of Government, ruined by the Rebels, having informed me that my predecessor, Sir Guy Carleton was pleased to promise as soon as the present troubles were at an end, the same should be restored, at the expense of Government, to the state they were in before these broke out, and said promise appearing to me just, I do hereby ratify the same, and assure them the said promise, as far as in me lies, shall be faithfully executed, as soon as that happy time comes.*[7]

The Preliminary Articles of Peace of Paris, April, 1783, between Great Britain and the United States of America, did not consider the Six Nations and their interest in the land reserved for their use in the United States of America by the Royal Proclamation of 1763 and the Treaty of Fort Stanwix signed in 1768. Sir Frederick Haldimand had apparently advised the British Government that provision should be made in the Peace Treaty for the Six Nations and their lands. However, the Treaty of Paris of September, 1783, transferred ownership to a jurisdiction over the territory delineated by the Treaty of Fort Stanwix, 1768, to the United States. The Six Nations were angered by the omission from the Treaty of Paris of provisions protecting their interests in the United States. The Six Nations responded that

> *they were a free People Subject to no Power upon Earth [and that the King] had [no] right Whatever to grant away to the States of America their Rights or Properties without a manifest breach of all justice and Equity, and they would not submit to it.*[8]

The Six Nations argument was based upon their understanding of the "chain" of treaties of "peace and alliance" which had begun in 1679 and had culminated with the Treaty of Fort Stanwix of 1768.

The Six Nations who fought with the British were unable to negotiate a satisfactory settlement with the Commissioners of Indian Affairs, appointed by the Congress of the United States.[9] Additionally, the Six Nations lands in the United States of America, which the British Crown was no longer able to protect, were being encroached and settled upon by American settlers.[10]

In March, 1783, Joseph Brant, a Chief of the Mohawk, representing the "Mohawks and other Indians," formally petitioned Sir Frederick Haldimand for the fulfillment of his promise of April 7, 1779.[11] It should be noted that in a February 3, 1791 letter to the Commission of Enquiry regarding the Six Nations Land Claims, appointed in January, 1791, Sir John Johnson stated that

> *[t]he* ***Original demand of the Mohawks was from the Centre of the River Appennie to another River or Creek,*** *the Name of which I do not recollect but you have their Boundaries as last agreed on. I imagine they expect to extend in rear as far as the Country was purchased from the Mississaugas [emphasis added].*[12]

This "demand" for a tract from "the centre of the River" was apparently dropped; in March, 1783 Joseph Brant formally petitioned that Sir Frederick Haldimand

> *Impower Lieut. Col. Butler to purchase from the Missassague, or proprietors, a tract of land consisting of about six miles on each side of the Grand River, called Oswego running from the River La Tranche into Lake Erie, for the use of the Mohawks and such of the Six Nations as are inclined to join them in that settlement.*[13]

The grounds for the petition were that the Six Nations were loyal to the British Crown and they had sustained losses during and after the Revolutionary War while furthering the interests of the Crown.[14] Sir Frederick Haldimand, with the advice of Sir John Johnson,[15] agreed with Joseph Brant that the Crown had an obligation to the Six Nations, but reserved his decision on the implementation of that obligation until he received instructions from the British Government.[16] In August, 1783 the British Government concurred with Haldimand's suggestion that a tract of land be established for the occupation of the Six Nations. Frederick North, Earl of Guilford (Lord North), who served as Prime Minister throughout the American Revolutionary War, (with the exception of the short lived ministry of William Petty Fitzmaurice, Second Earl of Shelburne), wrote to Sir Frederick Haldimand on August 8, 1783 that

> *The King... much approves of your having sent Major Holland to... survey the North Side of Lake Ontario, as well as of your intention of carrying into execution your endeavor to prevail upon the Mohawks to settle to the Northward of the Lake, provided the Country should be found well suited for their convenience. These people are justly entitled to Our peculiar Attention, and it would be far from either generous or just in Us, after our Cession of their Territories and Hunting Grounds, to Forsake them. I am, therefore, authorized to acquaint you, that the King allows you to make those Offers to them, or to any other Nations of the friendly Indians, who may be desirous of withdrawing themselves from the United States, and occupying any Lands which you may allot to them within the Province of Quebec [as it then was constituted].... In the assortment of Presents to be sent out to you for these People you will find a supply of Tools and Implements for Cultivation, which, it is judged will be useful in the formation of their new Settlements.*[17]

Sir Frederick Haldimand initially offered an area adjacent to the Bay of Quinte to the Six Nations in April, 1783. In May, 1783, he had ordered Major Samuel Holland, the Surveyor General of Quebec, to survey the area adjacent to the Bay of Quinte, accompanied by Joseph Brant so

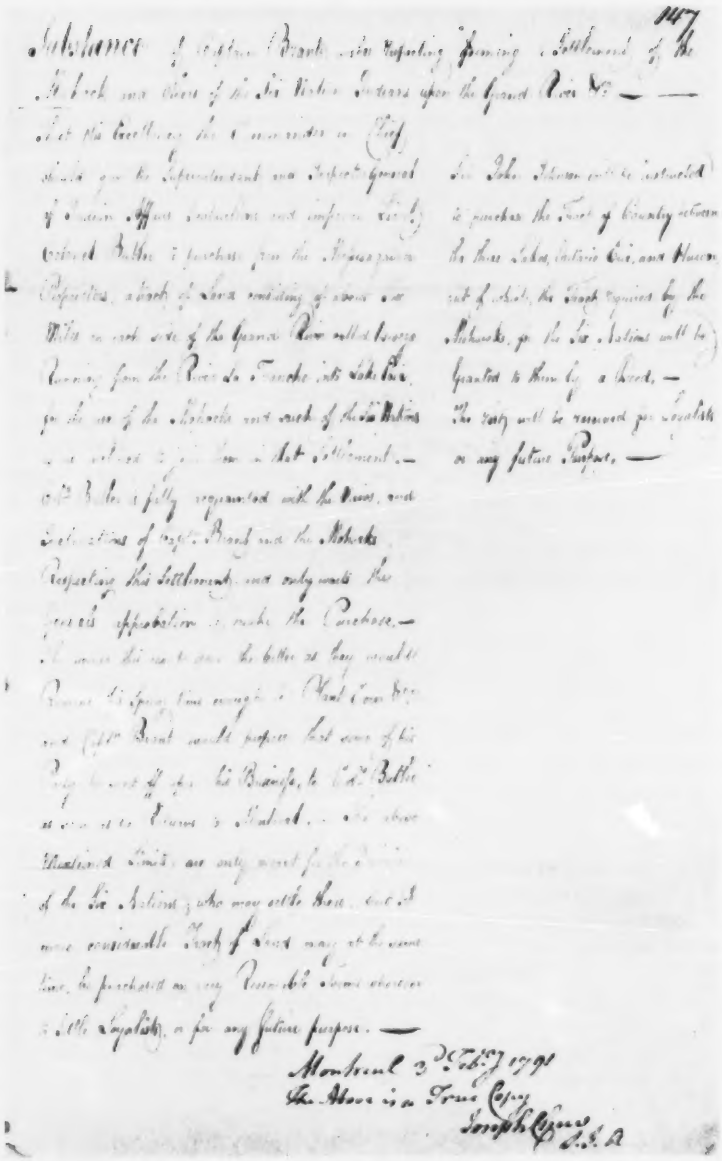
> *that Joseph may, from personal knowledge or observation, have it in his power to make a faithful report to the Indians of what is doing in this matter, and give his opinion of what it is likely to turn out.*[18]

Joseph Brant, after examining this proposal, rejected it. Instead, he apparently suggested the area adjacent to the Grand River as the best location for the Six Nations. Joseph Brant had three reasons for preferring the Grand River region to that of the Bay of Quinte: it was similar to the Mohawk Valley, the Mohawk traditional hunting grounds; it was closer to the Seneca, who were remaining in the United States of America, and others of the Six Nations remaining in what was to become western New York State; and the land adjacent to the Grand River had good agricultural potential.[19]

(c) The Haldimand Proclamation of October 25, 1784

In 1784, the Mississauga Indian people were regarded by the British Government as the aboriginal inhabitants of the territory in which the Grand River tract was located.[20] The Mississauga, after a May 22, 1784 meeting with the Six Nations,[21] agreed to cede to the British Crown their interest in land within their hunting grounds. Lieutenant-Colonel Butler was to be given

Plate 1
"Substance of Captain Brants wishes respecting forming a Settlement of the Mohock and others of the Six Nation Indians upon the Grand River". [Ontario Archives, RG1, A-I-1, Vol. 2, p. 147.]

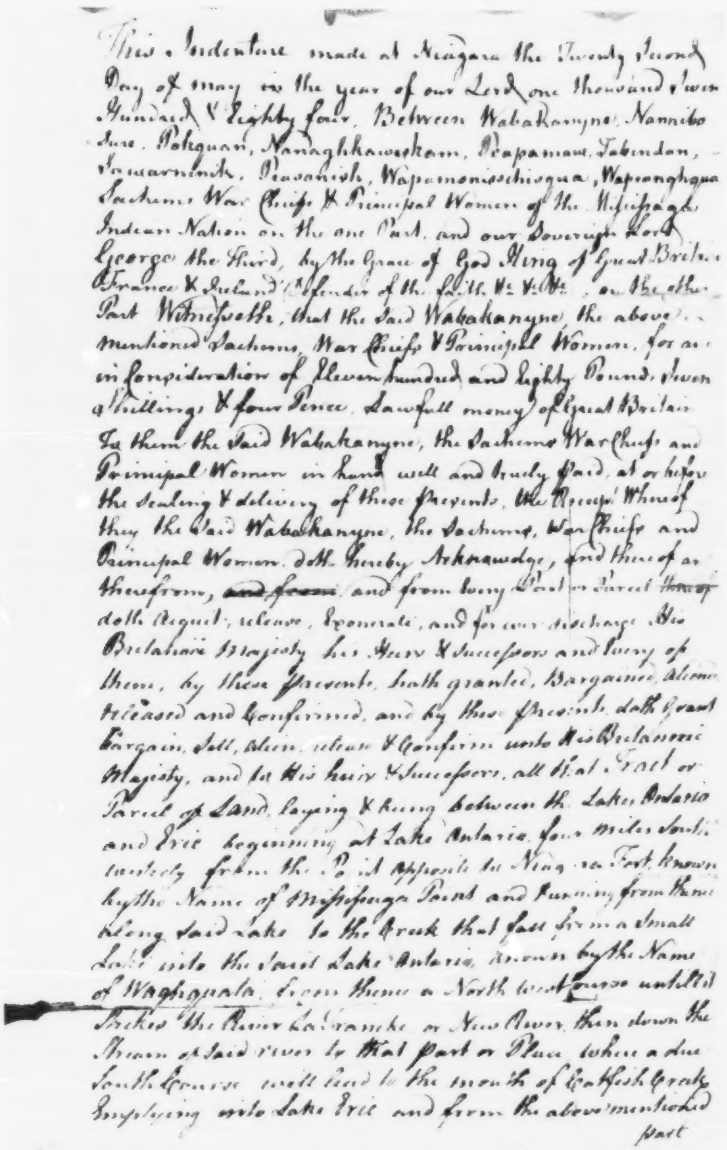


the Necessary directions for Purchasing without loss of time, the Tract of Country... situate between Lakes Ontario, Erie & Huron.[22]

By an indenture dated May 22, 1784, the Mississauga ceded part of their hunting grounds to the British Crown, including the "waters" and "watercourses" within the area ceded[23] (which was later confirmed as Treaty #3 of December 7, 1792). On October 25, 1784, Sir Frederick Haldimand issued a Proclamation which stated in part that the Six Nations were

> *to take possession of and settle upon the banks of the river commonly called Ouse or Grand River, running into Lake Erie, allotting to them for that purpose six mile deep from each side of the river, beginning at Lake Erie, and extending in that proportion to the head of the said river.*[24]

Plate 2
"Indenture made at Niagara the twenty second day of May in the year of our Lord one thousand seven hundred and Eighty four between... the Mississauga Indian Nation... and our Sovereign Lord, George the Third...". [Ontario Archives, RG1, A-I-1, Vol. 2, pp. 145–147].



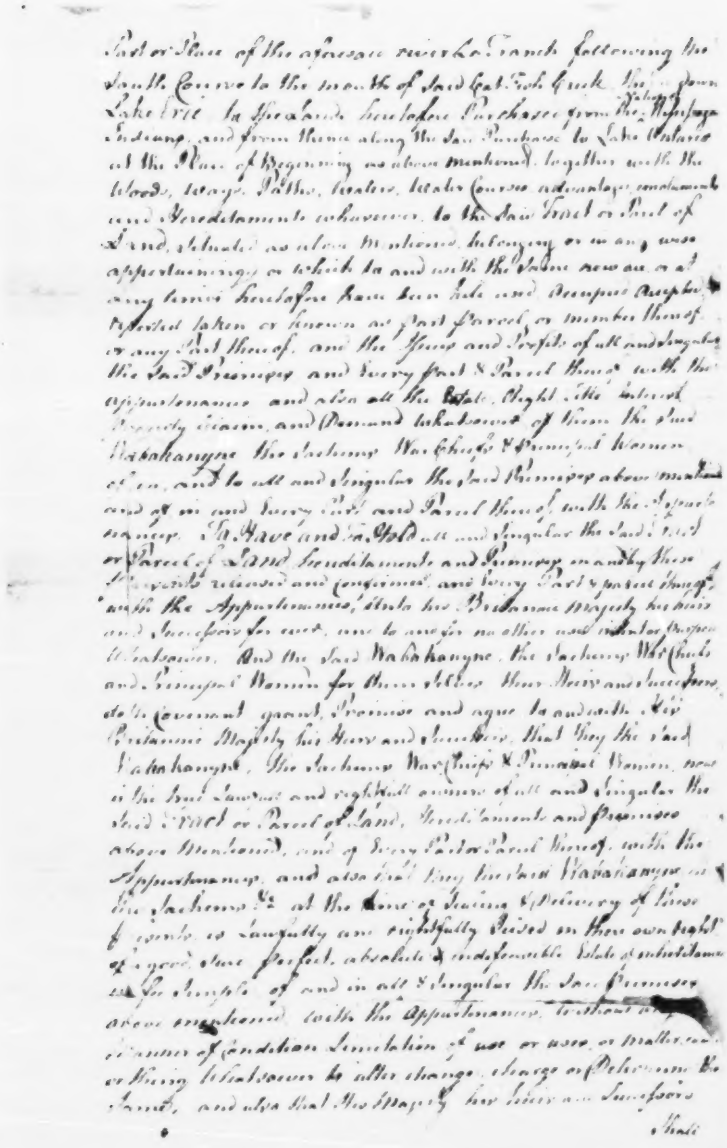
This Indenture made at Niagara the Twenty Second Day of may in the year of our Lord one thousand Seven Hundred & Eighty four, Between Wabakanyne, Nannibo Sure, Pahguan, Nanaghkawetkam, Peapamaw, Tabindan, Sawarmenth, Peasanish, Wapamoniesthiogua, Waperonghqua Sachems War Chiefs & Principal Women of the Mississagah Indean Nation on the one Part, and our Soverign Lord George the Third, by the Grace of God King of Great Britain France & Ireland Defender of the Faith &c. &c. &c. on the other Part Witnesseth, that the said Wabakanyne the above mentioned Sachems, War Chiefs & Principall Women, for and in Consideration of Eleven hundred and Eighty Pounds, Seven Shillings & four Pence, Lawfull money of Great Britain To them the said Wabakanyne, the Sachems War Chiefs and Principal Women in hand well and truely Paid, at or before the Sealing & delivery of these Presents, the Receipt Whereof they the said Wabakanyne, the Sachems, War Chiefs and Principal Women doth Hereby Acknowledge, and thereof and therefrom, ~~and from~~ and from every Part and Parcel thereof doth Acquit, release, Exonerate, and for ever discharge His Britannick Majesty his Heirs & Successors and every of them, by these Presents, hath granted, Bargained, Aliened Released and Confirmed, and by these Presents doth Grant Bargain, Sell, Alien, release & Confirm unto His Britannick Majesty, and to His heirs & Successors, all that Tract or Parcel of Land, Lying & being between the Lakes Ontario and Erie beginning at Lake Ontario four miles South Westerly from the Point opposite to Niagara Fort known by the Name of Missisaugas Point and Running from thence along said Lake to the Creek that Falls from a small Lake into the said Lake Ontario, known by the Name of Wagaguata, from thence a North West Course untill it Strikes the River La Tranche or New River, then down the Stream of said river to that part or Place, where a due South Course will lead to the mouth of Catfish Creek Emptying into Lake Erie and from the above mentioned

part

The Proclamation was imprecise as to the geographic boundaries of the tract of land being granted because, at the time of its issuance, the area had not been surveyed by the British Government. Sir John Johnson had apparently suggested that a survey be conducted "to determine... the boundaries of the intended Grant", but this suggestion was rejected by the Military Authority at Niagara.[25] The imprecision was subsequently recognized, for example, by a government official in 1822, who noted that Haldimand "does not define the tract with any precision".[26]

A map compiled by Major Samuel Holland and John Collins, in the Surveyor General's Office in 1790 indicated that the British Government lacked knowledge of the Grand River region.[27] Augustus Jones, Acting Deputy Surveyor, was commissioned in 1791 by the Nassau District Land Board to survey the boundaries of the Six Nations lands adjacent to the Grand River. The Land

Plate 2 (ii)

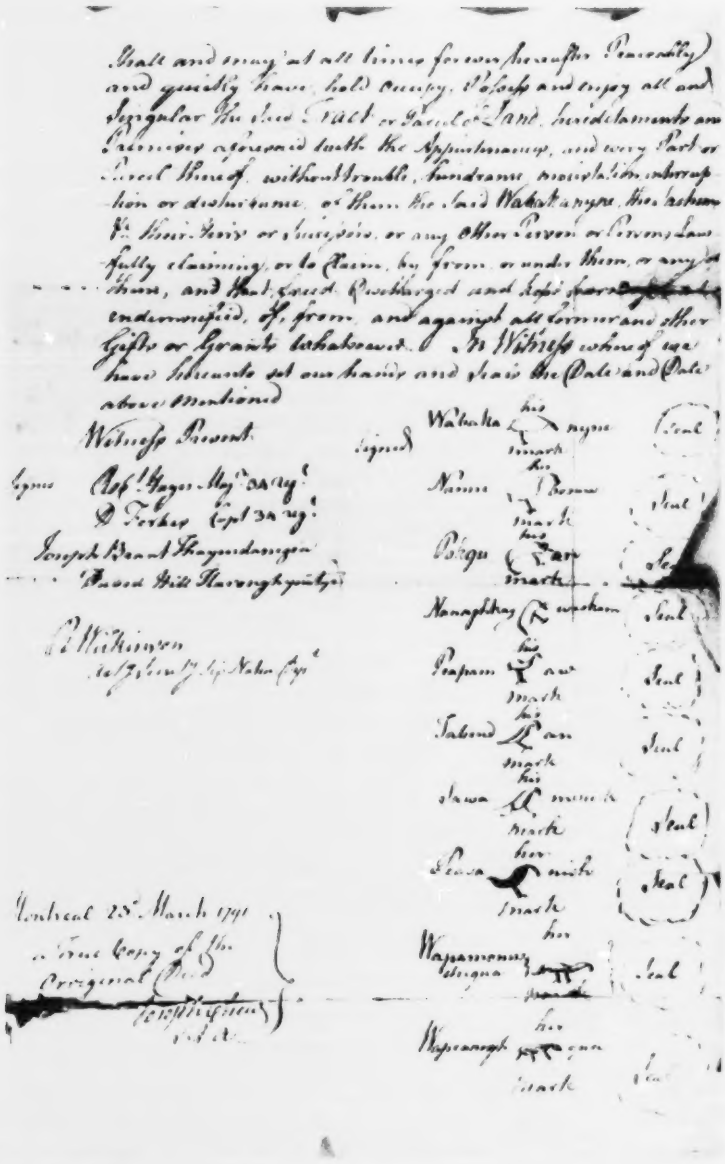


Board had acted upon a recommendation from the Government at Quebec:

> *His Lordship informed the board that certain Indians of the Six Nations claimed a tract of land at the Grand River on the north Shore of Lake Erie stated to have been promised to them by Sir Frederick Haldimand in the year 1784... His Lordship pointed out the expediency of ascertaining the nature and extent of the claims to give full effect to any promises, and to gratify any reasonable expectations, in which the faith of government might be concerned, in such a way as would best answer the end of making a permanent provision for the persons interested and their descendants.*[28]

Augustus Jones was directed by an order of the Land Board of Nassau (on December 20, 1790) "to take the course of the Grand River from its mouth to the extent of the Indian Claims [sic]."[29] The

Plate 2 (iii)



purpose of the survey was to ascertain "the exact boundaries of the Indian Lands on the Grand River."[30] Augustus Jones was to contact the Chiefs to explain "the purpose of his journey" and "in order to prevent as much as possible any erroneous [?] imprecision [?], he be further desired to request some of them to accompany him on the business."[31]

Augustus Jones apparently had a plan of the survey completed by late January, 1791. The minutes of a meeting of the Land Board, dated February 1, 1791, stated that the Chairman observed that the "tract... appears to be a part of the Purchase made of the Mississauga Nation by the Deed of the 22nd May, 1784."[32]

Joseph Brant and other Chiefs of the Six Nations apparently concurred with this February 1, 1791 plan of survey and the boundaries to the Grand River tract delineated on it. The Commissioners of the Land Board wrote to the Governor General on February 26, 1791 that

The Grant of Lands to the Indians on the Grand River extends to six miles on each side of that River from its mouth till a line running North West, from the Mouth of the little Lake at the West end of Lake Ontario shall travers [sic] it. The Division line between our Settlement and their Lands had never been ascertained. Lest incroachments [sic] should imperceptibly be made we formed the resolution found in the Minutes of the 20th December last. Fortunately at the meeting of the Board on 1st Feb. Capt. Brant with several of the Chiefs of the Grand River happened to be at Niagara and we thought it highly essential to procure their opinion and concurrence in the Business and we have now sent Mr. Jones with a [illegible word] provided as before to run the lines on each side of the river as the Plan of the River is rather bulky.[33]

The plan was apparently signed by Joseph Brant and the Chiefs thereby intending to indicate their acceptance of the boundaries as surveyed by Augustus Jones in January, 1791. The "Unanimously agreed upon" east and west boundaries were to be two lines parallel to a centre line connecting the Mohawk Village and the easterly bend of the Grand River approximately two miles from the mouth of the river. The

two Parallel Lines to this [centre line] Six Miles Distant on each side of the Grand River Shall form the Bounds between them [the Six Nations] and the Settlement of Nassau.[34]

The above arrangements avoided the irregular east and west boundaries that would have occurred if the Haldimand Proclamation was taken literally, i.e. "Six Miles deep from each side of the Grand River."

A copy of this signed plan has not been located and does not appear to be extant. However, this signed plan was apparently used by government officials in Quebec to indicate the location of the boundaries of the lands granted to the Six Nations.[35]

Joseph Brant interpreted the Proclamation to be a grant in fee simple to the tract of land adjacent to the Grand River.[36] He was also of the opinion that the Six Nations were the sovereign allies of the Crown, not its subjects.[37] In a letter to William Claus (1765–1826), an important official in the Department of Indian Affairs and grandson of Sir William Johnson, for example, Joseph Brant commented that

At the close of the late American War, we applied to His Excellency General Haldimand for the Lands on the Grand River, that we might again settle ourselves, and live as we formerly had done, when we had lands that we could call our own property—General Haldimand without Hesitation granted us the same... We have understood... from some White People here, that it does not appear from this Grant, that we are entitled to call these Lands on the Grand River our own. In consequence of this we applied to His Excellency Lieut. Governor Simcoe for a new Grant, he having upon his arrival promised to settle this Matter agreeable to our Wish.[38]

The British, though, took a different view of the nature of the interest vested in the Six Nations and the political status of the Six Nations.[39] For example, the "Trustees of the Six Nations Indians", Messrs. John H. Dunn, George H. Markland, and William Hepburn, in a report on the Six Nations lands written in the early 1830's, concluded that

the most extensive effect [that is] possible to the Grant of Sir Frederick Haldimand... it confers an equitable title merely upon

the Indians in the Grand River Lands, leaving the legal title still vested in the Crown.[40]

(d) *An Act to introduce the English Law as the Rule of Decision*, 1792, and the common law principle of *ad medium filum aquae*

On October 15, 1792 the Legislature of Upper Canada passed *An Act to introduce the English Law as the Rule of Decision in all matters of Controversy relative to Property and Civil Rights.* This statute established the English common law as the rules by which judges decided cases brought before them. It was also this statute that the Ontario Court of Appeal in 1908 used to conclude that the English common law principle of *ad medium filum aquae* was operative in Upper Canada from October 15, 1792.[41] This principle grants to the owner of the land adjacent to the waterway ownership of the bed of a nontidal waterway. It should be noted that the principle of English common law was not indigenous to Upper Canada, nor to other jurisdictions within British North America prior to or after 1792. The Simcoe Patent of 1793 which was issued by John Graves Simcoe, Lieutenant Governor of Upper Canada, to clarify the interest in land held by the Six Nations in the Grand River tract, may or may not be subject to the provisions of the principle. The principle was removed as an operative principle of the common law in Ontario *vis a vis* navigable waters by *The Beds of Navigable Waters Act, 1911.*[42]

(e) The Simcoe Patent of January 14, 1793

The difference of opinion between the Crown and the Six Nations as to their political status and their interest in the Grand River Tract, combined with the difficulty with non-Indian people squatting upon Indian lands and the unauthorized alienation of Indian lands, necessitated that the intentions and legal effects of Haldimand's Proclamation be clarified. Additionally, an error in the description of the Mississauga Cession of 1784 (see p. 7), apparently detected by Sir John Johnson in the early 1790's, had to be corrected. The error involved the location of the northern boundary to the tract. At the time of issuance of the Haldimand Proclamation it was thought that the River La Tranche (Thames River) met the Grand River near the head of the Grand River and within the territory ceded by the Mississauga in 1784. This, however, does not occur.[43]

On January 4, 1791, Lieutenant Governor Alured Clarke appointed a committee to investigate "the nature and extent" of the Haldimand Proclamation's grant to the Six Nations. The committee was

> *to report the result of their inquiries, with their opinion of the proper course to be taken, and the draft of a bill, if they shall conceive the legislative interposition necessary.*[44]

The Committee reported on December 24, 1791, after examining the documentation relating to the Grand River tract, including Augustus Jones' survey of the land. It concluded that

> *as the faith of Government is pledged to the Mohawk Chiefs for the two tracts mentioned above [Grand River and Bay of Quinte] every precaution ought to be taken to preserve them, in the quiet possession and property of them and the Committee submit, that an Act of the provincial Legislature or a grant under the great seal of the province be made in favour of the principal Chiefs, on behalf of their Nation, or persons in trust for them, for ever.*[45]

On December 7, 1792, the Mississauga ceded all their interest in the territory in which the Grand River tract was located by Indenture correcting the previous error discovered by Sir John Johnson in the description of the boundary of the territory being ceded.[46]

The Simcoe Patent was issued on January 14, 1793. By this patent, the British Government intended to establish with greater certainty the location of the boundaries of the Grand River tract and to define the nature of the Six Nations interest in it. In the patent, the tract was described as being where the Grand River

> *empties itself into Lake Erie, and running along the Banks of the same for the space of Six Miles on each side of the said River, or a space co-extensive therewith comformably to a certain Survey made of the said Tract of Land, and annexed to these Presents, and continuing along the said River to a Place called or known by the Name of the Forks and from thence along the main Stream of the said River for the space of Six Miles on each side of the said Stream, or for a space equally extensive therewith, as shall be set out by a Survey to be made of the same to the utmost extent of the said River as far as the same has been purchased by us.*[47]

The British Government considered the location of the northernmost boundary of the Six Nations tract to be the present day township line dividing Nichol Township from the Townships of West Garafraxa and Eramosa.[48] That area in which the head of the Grand River is located was not included in the territory ceded by the Mississaugas in 1784 and 1792. It was subsequently ceded to the British Crown by the Mississauga on October 28, 1818 (Treaty #19).

It is to the lower section of the Grand River tract that the phrase in the Simcoe Patent "or a space co-extensive therewith" refers. The Simcoe Patent described the remainder of the boundary as "the space of Six Miles on each side of the said Stream or for a space equally extensive therewith" to the limit of the Mississauga Purchase, "as shall be set out by a survey to be made of" the complete tract. The Simcoe Patent intended to establish a geographic boundary for the tract which took into account the winding of the Grand River. The description in the Simcoe Patent provided for straight eastern and western boundary lines, instead of lines which corresponded directly to the sinuosities of the Grand River. The use of straight eastern and western boundary lines was apparently agreed to by Joseph Brant when he signed Augustus Jones' plan of the survey in 1791. Simcoe's Patent also reiterated that the area within the tract could not be alienated except to the British Crown, and that squatting upon Indian lands by non-Indian people would not be permitted.[49]

A second survey of the Grand River tract was commissioned by the Six Nations in 1796. Augustus Jones and Thomas Welch conducted the survey in 1796 and 1797.[50] Two parts of this survey are apparently extant, indicating boundaries for the tract which are approximately the same as those in later surveys.[51]

Joseph Brant was dissatisfied with Simcoe's Patent in its entirety and continued to act on the basis of his interpretation of Haldimand's Proclamation of 1784.[52] Joseph Brant and non-Indian people ignored the provisions of Simcoe's Patent. Unauthorized alienation of land by Indian people and squatting by non-Indian people continued at least until the early 1850's.

On November 2, 1796 Joseph Brant obtained the Power of Attorney from the other Chiefs and "Sachems" of the Six Nations to sell and lease the Six Nations land within the Grand River tract.[53]

Plate 3
The Mohawk Village, Grand River, 1793. [Ontario Archives, Simcoe Sketch 75].

Several of these sales were later confirmed by the Executive Council of Upper Canada on June 29, 1797.[54] On several other occasions, most notably in 1835, surrenders by the Six Nations and subsequent confirmation of prior alienations occurred.[55]

The written instruments from Joseph Brant to non-Indian purchasers of land, which purported to convey a Six Nations fee simple interest or a leasehold interest to the non-Indian purchasers, referred to the Haldimand Proclamation of 1784 as the basis for the Six Nations interest in the land. For example, an "indenture for lease", dated October 12, 1801, to Abraham Nelles (1775–1838), a land surveyor and between 1832 and 1838 a member of the Executive Council, referred to the Haldimand Proclamation which, according to Joseph Brant, did

> *grant, appropriate and assign to them [the Mohawk] and such others of the Six Nations as wished to settle in the quarter six miles deep from each side of the river Ouse or Grand River....*[56]

The lease itself described the land leased as "butted and bounded" by the Grand River. The eastern boundary was

> *west... to the said river... thence down the River the several of the same [chains] to the stake of beginning containing the whole three thousand five hundred and nineteen acres... as well as for the Island in the said River.*[57]

(f) The Surrender of 1841

Samuel Peters Jarvis, Chief Superintendent of Indian Affairs, appointed John W. Gwynne in 1840, to investigate the Grand River tract and to make recommendations to resolve the conflicting claims between the Six Nations and non-Indian settlers and squatters. His report underlined the factual and legal complexities of the situation.[58]

The Executive Council of the Province of Upper Canada used John W. Gwynne's report in arriving at its conclusion that the only

politically feasible and the fairest method of resolving the conflicting land claims in the Grand River tract was to have the Six Nations make a general surrender of their lands, excepting an Indian reserve to be selected by them. Samuel Peters Jarvis was instructed to communicate this position to the Six Nations and to negotiate the surrender and resolution to the conflicting claims.

Jarvis wrote to the Chief of the Six Nations on January 5, 1841 that

> *The Lieutenant Governor is of opinion that very great difficulties will be found in any medium course between the expulsion of all intruders or non-interference, as experience has shewn that with all anxiety to do justice, and with all the care exercised to prevent injury to Indian interests, the interference of the Indians themselves, continually has created new difficulties, to which there seems to be no end, and yet the Government is expected to compromise its own character by adjudging what is right and wisely recommended by the Indians, or what, on the other hand, may be capriciously or corruptly counselled by them.*[59]

Jarvis continued to recommend that, in the best interests of the Indian people themselves, they surrender the whole tract to the Government "with the exception of such part of it as they may choose to occupy as a concentrated body".[60] It was further recommended that the proposed Indian Reserve be sufficient to provide each head of a family or grown man with one hundred or two hundred acres of land for cultivation, plus a "firewood reserve". The surrendered land would be disposed of by the Government "for the exclusive benefit of the Indians."[61]

A letter of January 15, 1841 from Samuel Peters Jarvis to the Six Nations reiterated and expanded upon the points he made in the letter of January 5, 1841. For example, the Government of Upper Canada undertook that the removal of

> *any Indian from a farm at present in his occupation... should emanate voluntarily from themselves, if, at any future period, they should think it advantageous so to do.*[62]

Further, Jarvis stated that for lands now improperly occupied by non-Indian people "the Government shall immediately interfere to compel the payment of a fair value into the funds."[63]

The Government laid much of the responsibility for this situation upon the Indian people themselves. This position was also reflected in Samuel Peters Jarvis' letter of January 15, 1841:

> *So far, indeed, from the Government receiving any co-operation from the Indians, notwithstanding their repeated remonstrances and calls upon them for protection, they find every measure proposed thwarted by the conduct of the Indians themselves, by the repeated pretended sales of their public property.*[64]

The Six Nations, "in full reliance and confidence in Her Majesty's Government" agreed to the general surrender (Surrender #50) on January 18, 1841,

> *and do hereby assent to Her Majesty's Government disposing of the land belonging and formerly reserved upon the Grand River for the Six Nations Indians, for the benefit of the said Six Nations.*[65]

The selection of the 20,000 acres to be set apart as an Indian Reserve, was deferred to a later date after consideration of "the general interests and peculiar wants of the Indians."[66]

After the general surrender of the Six Nations lands on January 18, 1841, several surveys of the surrendered land were

ordered by the Surveyor-General's office. Neither the plans of the surveys nor the surveyor's field notes and diaries include the bed of the Grand River as part of the Townships of Oneida, Seneca, Tuscarora, Onondaga and Brantford.

The Six Nations petitioned the Executive Council of Upper Canada in 1843 for an increase in the tract of land to be set apart for their use. On October 4, 1843, the Executive Council recommended that the Governor General accede to the Six Nations request, namely, that 55,000 acres plus the Oxbow (1,000 acres), Eagles' Nest (1,800 acres), Martin Tract (1,500 acres), the Johnson Settlement (7,000 acres), and a lot at Tuscarora upon which a church was built be included within the Indian Reserve. The Executive Council, however, did "not look upon this as a final arrangement". The Executive Council expected the Six Nations to surrender additional areas in the near future.[67]

The Governor General, on September 19, 1844, appointed David Thorburn, Superintendent of the Six Nations,

> *to "ascertain" [sic] the real inclinations of the Indians the extent that they desire to be Reserved and which place... But not to form any part of Lands "occupied by other settlers" [sic].*[68]

Additionally, Thorburn was to resolve all claims by the squatters and settlers with legitimate grievances.[69] David Thorburn met with the Chiefs of the Six Nations on several occasions between October, 1844 and March, 1848 to discuss which lands were to be set apart as an Indian Reserve.[70] By March, 1848, the present Six Nations Indian Reserve in Tuscarora Township, part of Oneida Township, and 200 acres adjacent to the Mohawk Church and River lots numbers 45 to 61 inclusive in Onondaga Township were agreed upon as constituting the Six Nations Indian Reserve.[71] The Indian Reserve was adjacent to the Grand River but no evidence has been located to suggest that the Indian Reserve included or was to include the bed of the river, or that the Six Nations Indian Band wanted the bed of the Grand River to be included as part of the Indian Reserve.

(g) The Indian Protection Act, 1850

Several of the squatters refused to obey the public notice of June 16, 1846 warning them to leave the Indian Reserve. The squatters brought actions against the Government in the County Court, contesting both the loss of lands within the Indian Reserve occupied by the squatters and the valuations of their improvements to those lands. The squatters lost the cases both at the trial level and on appeal to the Court of Chancery. Nevertheless, a few squatters remained on the Indian Reserve necessitating legislative action, both for the Six Nations Indian Reserve and other Indian lands with similar problems.[72]

On August 10, 1850 the Legislature of the Province of Canada passed *An Act for the protection of the Indians and Indian lands*[73] which provided for summary conviction of squatters on any Indian lands, and thereupon, the issuance of Writs of ejection enforceable by a Sheriff. The Act did not apply to all Indian lands within Upper Canada, rather it extended only to those Indian lands specifically made subject to the Act's provisions by the Governor. Lord Elgin's Proclamation dated November 8, 1850 specified that the provisions of this Act would apply:

> *To that certain tract or parcel of land situate in the Township of* ***Oneida*** *in the County of Haldimand... which is butted and bounded and may be known as follows: commencing at the*

North Westerly Angle of the said Township of Oneida at the edge of the waters of the Grand River; then Easterly along the edge of the said river to the allowance for road between water lots numbers twelve and thirteen in the same Township, then Southerly along the said allowance and its prolongation in the same course, to the southerly boundary line of the said Township, then Westerly along the said boundary line to the South-West Angle of the said Township; then Northerly along the boundary between the said Township of Oneida and the Township of Tuscarora, to the waters of the Grand River aforesaid; the place of the beginning comprising lots numbers, one, two, three, four, five and six, in the first, second, third, fourth, fifth and sixth concessions respectively of Oneida aforesaid, and also River lots numbers, one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve, in the same Township. ***Also*** *to the whole of the Township of* ***Tuscarora*** *in the said County of Wentworth.* ***Also*** *to that certain parcel of land containing two hundred acres more or less adjacent to the Mohawk Church, and known as Lot Number Five in the Eagles' Nest, in the Township of Brantford in the said County of Wentworth,* ***and also,*** *to those certain Lands in the Township of* ***Onondaga,*** *in the said County of Wentworth, East of Fairchild's Creek, known as River lot numbers forty five, forty six, forty seven, forty eight, forty nine, fifty, fifty one, fifty two, fifty three, fifty four, fifty five, fifty six, fifty seven, fifty eight, fifty nine, sixty and sixty one in the third Concession of the same Township.*[74]

This legal description includes the Township of Tuscarora, a western portion of the Township of Oneida, and a small block of land in the Township of Onondaga. By 1853 all of the squatters were removed from the Six Nations Indian Reserve.[75]

(h) Legislative and Administrative Jurisdiction

The ownership of the bed of the Grand River, as with all navigable rivers and lakes within the territory ceded by the King of France to the King of England by the Treaty of Paris, 1763, was vested in the British Crown.[76] The Executive of the Provinces of Upper Canada and of Canada prior to Confederation had the common law right to exercise and administer the Crown's proprietary rights over the beds of navigable rivers and lakes,[77] which was legislatively confirmed by *An Act respecting the sale and management of the Public Lands* in 1860.[78] Section 109 of the *British North America Act, 1867* provided that

> *All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union... shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same;*

and thus transferred legislative and administrative jurisdiction to the beds of waterways within the geographic boundaries of Ontario to the Province of Ontario and the ownership of those beds remained in the Crown in right of the Province of Ontario. Historically, the bed of the Grand River has been continuously administered by Ontario from 1867 to the present as Crown land in right of the Province.

III Summary

1. The Six Nations traditional hunting grounds were in parts of the present day States of New York, Ohio and Pennsylvania in the United States of America. Part of their traditional hunting grounds was ceded to the British Crown by the Treaty of Fort Stanwix, 1768 pursuant to the provisions of the Royal Proclamation of 1763.

2. The Six Nations fought for the British forces against the American forces during the American Revolutionary War, 1775–1783. In April 1779 the Six Nations obtained a promise from Sir Frederick Haldimand, Governor of Quebec, that the British Government, at its expense, would restore to the Six Nations their unceded lands in the above described territory.

3. The Six Nations suffered losses to their land both during the war and after the Treaty of Paris was signed ending the Revolutionary War in September 1783. No provision was made in the Treaty of Paris for the return of the Six Nations residing outside the United States to their traditional hunting grounds, nor were the Six Nations able to negotiate a satisfactory agreement with the representatives of the Congress of the United States.

4. The British Government agreed to grant a tract of land in present day Ontario to the Six Nations for their occupation. Haldimand's Proclamation of October 1784 was an attempt to fulfill the obligations of the British Crown to the Six Nations. The Proclamation cited the Six Nations loyalty to the Crown, and their losses during and after the Revolutionary War, as the basis for the grant of the tract of land "Six Miles deep from each side of the [Grand] River."

5. The Mississauga were considered by the British Government to be the aboriginal inhabitants of the territory in which the Grand River tract was located. The Mississauga, on May 22, 1784, after meeting with the Six Nations, ceded their aboriginal interest to the territory to the British Crown.

6. The tract of land granted to the Six Nations was surveyed by Augustus Jones in early 1791. At a meeting in February 1791 with the Land Board of the District of Nassau, the Six Nations apparently agreed to boundaries to the tract of land which probably corresponded to later surveys.

7. The Six Nations and the British Government disagreed as to the nature of the Six Nations interest in the tract of land and their political status. Additionally, an error in the cession from the Mississauga was discovered. Lieutenant Governor John Graves Simcoe issued Simcoe's Patent on January 14, 1793, which was intended to define in greater detail the Six Nations interest in the tract of land adjacent to the Grand River and the boundaries of the tract of land granted to the Six Nations. The Simcoe patent established the boundaries of the tract of land as "running along the Banks of the Grand River for the space of six miles on each side of the said river or a space co-extensive therewith." The boundaries of the tract of land in the Simcoe Patent apparently corresponded to those established at the meeting of February, 1791 between the Six Nations and the Land Board of the District of Nassau.

8. Joseph Brant, the representative of the Six Nations, ignored the Simcoe Patent. He purported to sell or lease land to non-Indians. On several occasions these purported conveyances were confirmed by the Government of Upper Canada. Non-Indian people squatted upon the tract of land reserved for the use of the Six Nations, contrary to the Royal Proclamation of 1763.

9. In January, 1841 Samuel Peters Jarvis, Chief Superintendent of Indian Affairs for Upper Canada, at the request of the Executive Council, recommended to the Six Nations that their interest in the Grand River tract of land be surrendered, with the exception of 20,000 acres to be chosen by the Six Nations as an Indian Reserve. This suggestion was accepted by the Six Nations in January 1841. Surveys of the surrendered land, conducted in 1842, did not include the bed of the Grand River within the surveyed Townships.

10. David Thorburn was appointed to investigate and settle the claims of the squatters to land within the tract and to negotiate with the Six Nations the location of the land to be set apart as an Indian Reserve. Approximately 55,000 acres south of Brantford, at the site of the present day Six Nations Indian Reserve #40, was selected as Indian Reserve land by the Six Nations Indian Band in 1848. This area did not include the bed of the Grand River.

11. The bed of the Grand River was administered as Crown land by the Governments of Upper Canada and the Province of Canada prior to Confederation and has been administered from 1867 to the present by the Government of Ontario.

IV Notes

1. Charles M. Johnston, **The Valley of the Six Nations, A Collection of Documents on the Indian Lands of the Grand River,** (Toronto: The Champlain Society, 1964), p. xxviii.

2. See Barbara Graymont, **The Iroquois in the American Revolution,** (Syracuse, N.Y.: Syracuse University Press, 1972) p.xii Chapter I, "Map of the Frontiers of the Northern Colonies", **William Johnson Papers,** Volume VI, (Albany N.Y.: The University of the State of New York), p. 450; Bruce G. Trigger, **Handbook of North American Indians, Volume 15, Northeast** (Washington: Smithsonian Institution, 1978).

3. Brant's Speech to Haldimand at Quebec, May 21, 1783 as quoted in Charles M. Johnston, **Valley of the Six Nations,** pp. 39–40. See also Barbara Graymont, **The Iroquois in the American Revolution,** pp. 26–27, 260, and Francis Jennings, **The Ambiguous Iroquois Empire,** (New York: W.W. Norton and Company, 1984).

4. Thomas Gage to Sir Wm. Johnson, January 2, 1769, **William Johnson Papers,** Vol. XII, p. 681.

5. Sir William Johnson to Thomas Gage, March 5, 1768, **William Johnson Papers,** Volume XII, p. 459. See also Graymont, p. 27; Haldimand to Colonel Campbell, July 20, 1779, Public Archives of Canada, Haldimand Papers, A-683 in which Haldimand advises Colonel Campbell that:

   > *It would not be amiss to represent to them that* ***as good subjects and Dutyfull Children,*** *they ought, when bad people come amongst them rather to advise you of it, and deliver them up, than to harbour and conceal them [Emphasis added.]*

6. William Johnson to Thomas Gage, November 13, 1768, **William Johnson Papers,** Volume XII, p. 636.

7. Sir Frederick Haldimand, Quebec, April 7, 1779, P.A.C., Haldimand Papers, A-683; See also, Proceedings of a Meeting of Sir John Johnson and the Six Nations, Niagara, March 20, 1780, P.A.C., Haldimand Papers, A-686.

8. Allan MacLean to Sir Frederick Haldimand, May 18, 1783, P.A.C., Haldimand Papers, A-685; **Ibid.** Sir Frederick Haldimand to Sir John Johnson, May 22, 1783; **Ibid.** A-686, Haldimand to Six Nations, March 24, 1784; See also Graymont, **The Iroquois in the American Revolution,** p. 260.

9. Proceedings of Six Nations Council at the Onondaga Settlement, July 2, 1783, P.A.C., Haldimand Papers, A-683; **Ibid.,** A-686, Schuyler to Six Nations, January 1784. See also Charles M. Johnston, **The Valley of the Six Nations,** p.XXXIV, Barbara Graymont, **The Iroquois in the American Revolution,** pp. 264–295.

10. Allan MacLean to Sir Frederick Haldimand, May 18, 1783, P.A.C., Haldimand Papers, A-684; **Ibid.,** A-685, Matthews to J. Johnson, May 29, 1783. See also Lord Dorchester to the Confederacy of Six Nations, March 10, 1791, Provincial Archives of Ontario (P.A.O.), Simcoe Papers, Letterbook Vol. 17, p. 35.

11. Brant to J. Johnson, May 4, 1784, P.A.C., Haldimand Papers, A-685; **Ibid.,** Haldimand to J. Johnson, May 26, 1783. For a recent biography on Joseph Brant, see Isabel Thompson Kelsay, **Joseph Brant, 1743–1807: Man of Two Worlds,** (Syracuse, N.Y.: Syracuse University Press, 1984).

12. Letter from John Johnson re Indian settlement on the Grand River, February 3, 1791, P.A.O., RG1, A-I-1, Vol. 2, p. 21.

13. "Substance of Brant's Wishes Respecting Forming a Settlement on the Grand River" and Haldimand's Answer, March 1783, P.A.C., Haldimand Papers, A-685. See also P.A.O., RG1, A-I-1, Vol. 2, p. 147.

14. **Ibid.**

15. J. Johnson to Haldimand, August 11, 1783, P.A.C., Haldimand Papers, A-685.

16. Haldimand to J. Johnson, May 26, 1783, P.A.C., Haldimand Papers, A-685. See also **Ibid.** Haldimand to J. Johnson, May 22, 1783.

17. Lord North to Haldimand, August 8, 1783 as quoted in Charles M. Johnston, **The Valley of the Six Nations,** p. 42.

18. Haldimand to J. Johnson, May 26, 1783, Haldimand Papers, A-685.

19. See Barbara Graymont, **The Iroquois in the American Revolution,** p. 264; William N. Fenton and Elisabeth Tooker, "Mohawk", in Bruce G. Trigger, **Handbook of North American Indians, Volume 15, Northeast,** p. 476. Charles M. Johnston, **The Valley of the Six Nations,** pp. xxxvii–xxxviii; A Six Nations' Council at Fort George, October 8, 1803, **Ibid.,** p. 105; The Report of the Rev. John Stuart, May 25, 1754 as quoted in Johnston, p. 49.

20. Charles M. Johnston, "An Outline of Early Settlement in the Grand River Valley", in J.K. Johnson (ed.), **Historical Essays on Upper Canada,** (Toronto: McClelland and Stewart Limited, 1975) p. 6; "Substance of Captain Brant's wishes respecting forming a settlement of the Mohawk and others of the Six Nations Indians upon the Grand River", P.A.O., RG1, A-I-1 Vol. 2, p. 147, in which the Mississauga are referred to as "proprietors".

21. A Six Nations meeting with the Mississaugas, May 22, 1784 as quoted in Charles M. Johnston, **The Valley of the Iroquois,** pp. 46–48.

22. Extract of a letter from General Haldimand to J. Johnson re proposed settlement of the Mohawks on the Grand River, March 23, 1784, P.A.O., RG1, A-I-1, Vol. 2, p. 106. See also P.A.O., **The Report of the Bureau of Archives,** 1905, Vol. 3, p. 489.

23. Copy of Deed from the Mississaugas, May 22nd, 1784, P.A.O., RG1, A-I-1, volume 2, p. 145.

24. Haldimand's Proclamation of October 25, 1784, **Indian Treaties and Surrenders,** Vol. one, (Toronto: Coles Publishing Company, reprinted edition 1971), p. 251.

25. Letter from John Johnson re Indian settlement on the Grand River, February 3, 1791, P.A.O., RG1, A-I-1 Vol. 2, p. 21.

26. C. Stewart to P. Maitland, P.A.C., RG7, G14, Vol. 1, 1792–1819, p. 710.

27. Plan of the District of Nassau in the Province of Quebec. Samuel Holland and John Collins—Compiled in the Surveyor General's Office by Order in Council 22 February, 1790. P.A.O., Maps, A-16.

28. P.A.O., RG1, A-I-1, Vol. 1, pp. 141–142.

29. P.A.O., RG1, A-I-1, Vol. 1, p. 193.

30. A. Gordon to District of Nassau Land Board, P.A.C., RG1, L4 Vol. 5, p. 93; See also note #22.

31. **Ibid.**, p. 94.

32. P.A.O., RG1, A-I-1, Vol. 1, p. 194. See also Several Drafts of Orders respecting Indian lands on the Grand River and Bay of Quinte, 25 March 1791, RG1, A-I-1, Vol. 2, p. 102; Letter J. Collins to A. Jones, re map of the District of Nassau, August 31, 1791, P.A.O., RG1, A-I-1, Vol. 2, p. 81.

33. Report of the Land Board of Nassau re measures taken to ascertain the extent of the Indian claims on the Grand River, February 26, 1791, P.A.O., RG1, A-I-1, Vol. 2, p. 105. It should be noted that in a draft of a report from the Commissioners of the Nassau Land board, the following paragraph was crossed out.

> *The **Tract given by the Land Board of Nassau to Capt. Brandt and other Mohawk Indians** as mentioned in their letter and Report above stated dated 26th Feby. and 26th March 1791 [emphasis added].*

No explanation was given for either the paragraph's inclusion in that draft report or its expungement. Several Drafts of Orders respecting Indian lands on the Grand River and Bay of Quinte, 25 March 1791, RG1, A-I-1, Vol. 2, p. 102.

34. P.A.O., RG1, A-I-1, Vol. 1, p. 194.

35. William Claus to Peregrine Maitland, April 10, 1819, P.A.C., RG7, G14, Vol. 1, p. 430. See also P.A.O., RG1, A-I-1, Vol. 1, p. 173.

36. Sally M. Weaver, "Six Nations of the Grand River, Ontario" in Bruce G. Trigger, **Handbook of North American Indians, Volume 15, Northeast,** p. 525.

37. See for example John Norton to Lord Colborne, December 1815, P.A.C., RG7, G14, Vol. 1; John Norton and Joseph Brant to Lt. Gov. F. Gore, September 4, 1809 and two undated drafts of letters written by John Norton, P.A.O., John Norton Papers. See also Charles M. Johnston, **The Valley of the Six Nations,** pp. xliv–xlv.

38. Brant's Address to William Claus on the Subject of the Indian Lands, November 24, 1796, as quoted in Charles M. Johnston, **The Valley of the Six Nations,** pp. 81–84.

39. See Sally M. Weaver, "Six Nations on the Grand River", p. 525.

40. Grand River Claims, Report of the Trustees of the Six Nations Indians, P.A.O., J.M. Snyder Papers, 1795–1859. Undated report, but probably written in the early 1830s. Also located in P.A.C., RG10, Vol. 103, pp. 41–45. See also Sally M. Weaver, "Six Nations of the Grand River", p. 525.

41. **Keewatin Power Co. v Kenora** (1908) 16 O.L.R. 184 **per** Meredith, J.A.

42. S.O.1 Geo. V. cap.6.

43. P.A.O., Simcoe Papers, Envelope 1. Marginal notation to "Bounds of a Tract of Land Purchased from the Mississauga Indians 2nd day of May 1784 by order of General Haldimand dated 23rd March, 1784":

> *Sir John Johnson apprehends a mistake was made in mentioning a NorthWest course which he thinks would not strike the River La Tranche [Thames River] and believe it should have been **SouthWest**.*

See also Letter from John Johnson re Indian settlement on the Grand River, February 3, 1791, P.A.O., RG1, A-I-1, Vol. 2, p. 21 ("it is uncertain whether the course described in the Deed,

commencing at a certain point at the entrance of the little lake at the head of Lake Ontario, will intersect the Grand or Oswego River so high up as the River La Tranche"); and John Johnson to J. Collins re purchase of Indian lands on the Grand River and Bay of Quinte, March 25, 1791, P.A.O., RG1, A-I-1, Vol. 2, p. 104.

44. P.A.O., RG1, A-I-1, Vol. 1, pp. 141–142.

45. P.A.O., **The Report of the Bureau of Archives,** pp. 493–494.

46. Cession #13, **Canada Indian Treaties and Surrenders,** (Ottawa: Queen's Printer), Vol. 1, p. 5.

47. **Ibid.,** Simcoe's Patent, January 14, 1793, p. 9.

48. Lord Bathurst to the Chiefs of the Six Nations, September 28, 1821, as quoted in Charles M. Johnston, **The Valley of the Iroquois,** pp. 68–69.; see also letter from John Johnson re Indian settlements on the Grand River, February 3, 1791, P.A.O., RG1, A-I-1, Vol. 2, p. 21.

49. See Simcoe's Patent, **Indian Treaties and Surrenders,** Vol. 1, p. 8.

50. See "Diary of Thos. Welch, Extra Deputy Surveyor From 27th May to 30 June 1796" P.A.O., RG1, CB-1 Box 13; **Ibid.** Diary of Survey of A. Jones, 1797, Mr. Jones' Diary of time surveying at the River Ouse, RG1, A-I-1 Vol. 46 and Vol. 28; and Thos. Welch RG1, A-I-1 Vol. 38.

51. See [Plan of Survey of Indian Lands on the Grand River] [Augustus Jones] [c. 1791–97] and the "Six Nations Lands, Northerly Part, Grand River, District of Gore", 1797, P.A.O. Maps A-15 and contrast to "Plan Shewing the Lands Granted to the Six Nations Indians situated on each side of the Grand River or Ouse, commencing on Lake Erie, containing about 674,910 Acres", c.1825, **Ibid.,** C-60, and Sketch Showing the Lands on the Grand River originally granted to the Six Nations' Indians. Thomas Parke, February 16, 1843, #2482 Ministry of Natural Resources, Survey Records (Toronto).

52. Governor Simcoe to Lord Dorchester, December 6, 1793, as quoted in Charles M. Johnston, **The Valley of the Six Nations,** pp. 75–77; **Ibid.,** Brant to Alexander McKee, February 25, 1793, p. 75; **Ibid.,** Brant to J. Johnson, December 10, 17987, pp. 93–94; Robert Linton to Peter Russell, April 3, 1798, P.A.O., Russell Papers; Sally M. Weaver, "Six Nations of the Grand River, Ontario", p. 525.

53. Brant's Power of Attorney to Sell the Indian Lands, November 2, 1796, in Charles M. Johnston, **The Valley of the Six Nations,** pp. 79–81.

54. **Ibid.,** pp. 87–88, Minutes of the Executive Council, June 29–July 1, 1797.

55. Confirmation of Land Given by Joseph Brant, 1835, in Charles M. Johnston, **The Valley of the Iroquois,** pp. 118–119.

56. P.A.O., Abraham Nelles Papers, Series G Indian Land Papers, 1798–1836. See also several Indentures found in P.A.C., RG10, volume 103, including Robert Nelles's, March 29, 1788 (pp. 48–49); Wheeler Douglas's, September 14, 1801, pp. 128–129; and Augustus Jones's, March 17, 1805, pp. 168–169.

57. **Ibid.,** Abraham Nelles Papers.

58. Report of John W. Gwynne on the State of the Six Nations to Samuel Peters Jarvis, Chief Superintendent of Indian Affairs, September 7, 1840, P.A.C., RG10, vol. 717.

59. Samuel Peters Jarvis to Mohawk Chiefs, January 5, 1841 attached to Surrender #50, **Indian Treaties and Surrenders,** p. 119.

60. **Ibid.,** p. 120.

61. **Ibid.,** p. 120.

62. **Ibid.,** p. 121.

63. **Ibid.**

64. **Ibid.**

65. **Ibid.,** Surrender #50, p. 122.

66. **Ibid.,** Samuel Peters Jarvis to the Chief of the Six Nations Indians, January 15, 1841, p. 122.

67. Minutes of the Executive Council for Upper Canada, Canada Land Books, Vol. 13, October 4, 1843, P.A.P., Ms. 9, Reel 11.

68. Sept. 27, 1844, Memo Book of the Comms. of Enquiry and Report on the Lands of the Six Nations Indians Grand River, David Thorburn, Comm., Series K-4, Thorburn Papers, P.A.O., Ms. 501.

69. **Ibid.,** October 5, 1844.

70. Memo Book of the Comms. of Enquiry. See for example, entries for the dates, October 18, October 31, December 18, 1844; January 20, January 31, March 25, September 17, September 18, October 30, 1845; March 25, 1848.

71. **Ibid.,** March 25, 1848. The lands set apart as the Six Nations Indian Reserve correspond to the description in Lord Elgin's Proclamation dated November 8, 1850 (see note 73).

72. Canada, Province of. Report on the Special Commissioners Appointed in the 8th of September, 1856 to investigate Indian Affairs in Canada. Journals of the Legislative Assembly of Canada, Appendix XXI.

73. Can. 13 & 14, Vict. cap. 74.

74. Lord Elgin's Proclamation, November 20, 1850, the terms "River lots" and "water lots" apparently both refer to lots of land fronting on or adjacent to the Grand River. No distinction is made between the two terms in the survey plans, surveyors' field notes, or surveyors' diaries for Oneida, Tuscarora, or Onondaga Townships. See O.A., RG1, CB-1, Box 28; Plan of Oneida on the Grand River (Map #1794), Plan of Tuscarora on the Grand River (Map #2256), Plan of Onondaga on the Grand River (Map #1795), Ministry of Natural Resources, Survey Records (Toronto); Field Notes #567, 568, 691, 1602, Ministry of Natural Resources, Survey Records (Toronto).

75. Canada, Province of. Journals of the Legislative Assembly of Canada for 1853. Appendix EEEE.

76. **Leamy v R** (1916) 54 S. C.R.43, 33 D.L.R. 237 (S.C.C) per Sir Charles Fitzpatrick, C.J. **Attorney General v Perry** (1805) 15 U.C.C.P. 329 (C.A).

77. Peter Hogg, **Constitutional Law of Canada** (Toronto: The Carswell Company Limited, 1977) pp. 392-393.

78. 23 Vic. Ch.2, S.35. See also **The Queen v Moss** (1896) 26 S.C.R. 322 (S.C.C.), pp. 333-334.

V Bibliography of Primary Sources

1. Public Archives of Canada

RG7	Records of the Lieutenant-Governor, 1792–1867. G14, Correspondence of the Lieutenant-Governors of the Provinces of Upper and Lower Canada and of the Province of Canada.
RG10	Records of the Department of Indian Affairs: An extensive and diverse collection of the records correspondence, maps and other documents of the Department of Indian Affairs, its predecessors and successors.
Haldimand Papers	A microfilm copy prepared for the Public of Canada (MG21) of the papers of Sir Frederick Haldimand (1718–1791) which are on deposit in the British Museum as Sloan and Additional Manuscripts, Add. Mss. 21661–21892. Haldimand was a Swiss mercenary who entered the British Army. He fought during the Seven Years' War and the American Revolution. Between 1778 and 1784 he was Governor of Quebec and Commander-in-Chief of the British Army in Quebec.

2. Provincial Archives of Ontario

RG1	Records of the Office of the Surveyor-General (1763–1845), Crown Lands Department (1827–1905), Department of Lands and Forests (1906–1972) and the Ministry of Natural Resources (1972–). Series A-I-1: letters received by the Surveyor-General, 1766–1813. Volumes 1 and 2 are surveyors' letters for the period 1766–1800 and include original loose letters, memoranda and Orders-in-Council. Series CB-1: Survey Diaries and Field Notes, 1790–1828.
Canada, Province of	Journals of the Legislative Assembly, Journals Sessional Papers of the Legislative Assembly which include copies of papers tabled in the Legislative Assembly and reports of its committees.
Executive Council of Upper Canada and Canada (Ms9)	A microfilm copy of the Upper Canada Land and State Books (1797–1841) and the Canada Land and State Books (1841–1867). The Land and Canada and State Books are the minutes of the Executive Council and its committees. The original books are on deposit (Ms9) in the Public Archives of Canada (RG1, E1 and E3).
Abraham Nelles Papers (Ms502)	A collection of correspondence, records and legal documents of Abraham Nelles (1775–1838). Nelles was a land surveyor and from 1832 to 1838 a member of the Council.

John Norton Papers (Ms94)	The John Norton Papers consist of original manuscript and typescript copies of correspondence to and from John Norton (? – 1826(?)). It is believed that Norton came to Upper Canada about 1787 and was adopted by the Mohawks in 1791. He became involved with the Six Nations Indian Band.
Russell Papers (Ms75)	The correspondence and account book of Peter Russell (1733–1808). Russell came to Canada with Lieutenant-Governor John Graves Simcoe in 1792. He was appointed Upper Canada's first Receiver General and Auditor General. In 1796 he became President of the Executive Council and Administrator of the Province of Upper Canada when Lieutenant-Governor John Graves Simcoe returned to England. He was succeeded by Peter Hunter in 1799 as President and as Administrator.
Simcoe Papers (Ms517)	John Graves Simcoe (1752–1806) arrived at Niagara in August, 1792 as Lieutenant-Governor of Upper Canada, a position he held until August, 1796, when he returned to England on a leave-of-absence. The papers include original letterbooks, correspondence and diaries prepared during his tenure as Lieutenant-Governor.
J.M. Snyder Papers (MU2863)	A small collection of papers which includes a schedule of Grand River land claims by the Trustees of the Six Nations Indian Band.
David Thorburn Papers (Ms501)	The papers of David Thorburn (1790–1862) include correspondence, journals, diaries and legal and business records. Thorburn was the Superintendent of the Six Nations Indian Band, 1844–1862, and an *ex officio* member of the Board of the Grand River Navigation Company and at times the President of the GRNC. The Trustees of the Six Nations Indian Band held shares in the Grand River Navigation Company.

3. State of New York

The Papers of Sir William Johnson, edited by James Sullivan and others were published between 1921 and 1965 by the State University of New York in Albany, New York in fourteen volumes. Sir William Johnson was Superintendent of Indian Affairs for the Northern Department.

VI Glossary*

ad medium filum aquae	– to the thread of the water to the central line, or middle of the stream;
alienation	– in real property law, the transfer of the property and possession of lands, tenements, or other things, from one person to another;
cession	– the act of ceding; a yielding or giving up; surrender; relinquishment of property or rights;
common law	– as distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action relating to the government and security of persons and property which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs;
deed	– a conveyance of realty, a writing signed by grantor, whereby title to realty is transferred from one to another;
estate	– the interest which any one has in lands, or in any other subject of property;
fee simple	– ordinarily, word "fee" or "fee simple" is applied to an estate in land, but term is applicable to any fund of hereditament, corporeal or incorporeal, and is all the property in thing referred to or largest estate therein which person may have;
grant	– to bestow; to confer upon some one other than the person or entity which makes the grant;
indenture	– a deed to which two or more persons are parties, and in which these enter into reciprocal and corresponding grants or obligations towards each other;
leasehold	– an estate in realty held under a lease; an estate for a fixed term of years;
patent	– a grant of some privilege, property, or authority, made by the government or sovereign of a country to one or more individuals;
power of attorney	– an instrument authorizing another to act as one's agent or attorney;
proprietary	– belonging to ownership; belonging or pertaining to a proprietor; relating to a certain owner or proprietor;
proprietor	– one who has the legal right or exclusive title to anything;
trustee	– one in whom an estate, interest or power is vested under an express or implied agreement to administer or exercise it for the benefit or to the use of another called the *cestui que trust*.

* Definitions from **Black's Law Dictionary** (revised fourth edition), St. Paul, Minnesota: West Publishing Co. 1968.